

ADMINISTRATIVE APPEAL OF	:	Order Granting Motions to
NORMAN GUIBORD, <u>ET AL.</u>	:	Vacate and Dismiss
	:	
v.	:	
	:	IBIA 75-52-A
COMMISSIONER, BUREAU OF INDIAN	:	
AFFAIRS and LAC COURTE OREILLES	:	
TRIBAL GOVERNING BOARD	:	June 16, 1975

In response to the Notice and Order to Show Cause issued by this Board on March 28, 1975, the Commissioner, Bureau of Indian Affairs and the Lac Courte Oreilles Tribe, through their respective counsel, have filed motions to (1) vacate the said Order of March 28, 1975, which suspended the Commissioner's approval of December 23, 1974, of a Lac Courte Oreilles Tribal election and the results thereof, and (2) dismiss the appeal.

The Commissioner's basis for the motion states the following reasons:

(a) Pursuant to Secretarial Order 2508 as amended on August 16, 1974, the Secretary of the Interior delegated to the Commissioner, Bureau of Indian Affairs, among other things, the authority to call elections in accordance with 25 CFR 52 and vested virtually all of the Secretary's authority over tribal constitutions including the authority to approve the results of any election on an amendment to a tribal constitution, and

(2) That the Secretary's delegation of December 14, 1973 (211 DM 13.7), to the Board of Indian Appeals to decide administrative appeals from officials of the Bureau of Indian Affairs did not delegate to said Board the authority to exercise the Secretary's discretionary authority. Finnesand v. Cornmissioner of Indian Affairs, 3 IBIA 263 (February 25, 1975).

(3) That the Commissioner's approval of the amendments to the Lac Courte Oreilles constitution

under Delegation 2508 was an exercise of the Secretary's discretionary authority final for the Department and not subject to further administrative review, and

(4) That the appellants, through their counsel, David M. Weiby, were erroneously advised by the Acting Commissioner, Bureau of Indian Affairs, on February 27, 1975, that the Commissioner's approval of the amendments to the constitution of the Lac Courte Oreilles Tribe was appealable to the Interior Board of Indian Appeals.

The Lac Courte Oreilles Tribe's motion for dismissal is based on essentially the same reasons given by the Commissioner and therefore is not repeated.

It appearing to this Board that it lacked appellate jurisdiction in the matter, and good cause appearing otherwise, the motions of the Commissioner, Bureau of Indian Affairs, and the Lac Courte Oreilles Tribe should be granted.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1(2) and 211 DM 13.7, it is hereby ORDERED:

(1) That the suspense order issued by the Board of Indian Appeals on March 28, 1974, be, and the same is hereby, VACATED and held for NAUGHT, and

(2) That the Board's Order Denying Motion to Vacate dated April 11, 1975, be, and the same is likewise VACATED, and

(3) That the appeal of Norman Guibord, et al., be, and the same is hereby, DISMISSED.

Done at Arlington, Virginia.

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Alexander H. Wilson  
Administrative Judge

I concur:

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Mitchell J. Sabagh  
Administrative Judge